

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LEONARD SALESKY,

Petitioner,

v.

WILLIE BONDS, et al.,

Respondents.

HONORABLE JEROME B. SIMANDLE

Civil Action
No. 15-8221 (JBS)

MEMORANDUM OPINION

SIMANDLE, Chief Judge:

Petitioner is proceeding pro se with a Second Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Docket Entry 1).

1. On May 2, 2005, Petitioner was convicted of first-degree attempted murder, N.J. STAT. ANN. § 2C:11-3(a)(1)-(2); second-degree aggravated assault, N.J. STAT. ANN. § 2C:12-1(b)(1); second-degree burglary, N.J. STAT. ANN. § 2C:18-2(a)(1); and third-degree terroristic threats, N.J. STAT. ANN. § 2C:12-3(b).

2. He was sentenced to a fifteen-year term, subject to an eighty-five percent parole disqualifier pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, for the attempted murder and to a concurrent seven-year term, subject to NERA, for the burglary. *State v. Salesky*, No. A-4946-04T3, 2006 WL 2057544, at *1 (N.J. Super. Ct. App. Div. July 26, 2006).

3. The New Jersey Superior Court Appellate Division upheld his convictions and sentence on appeal. *Id.* at *7. (Docket Entry 1 at 2). The Supreme Court of New Jersey denied certification on November 21, 2006. *State v. Salesky*, 911 A.2d 70 (N.J. 2006).

4. On February 26, 2006, Petitioner filed a petition for post-conviction relief ("PCR") in the Superior Court Law Division. (Docket Entry 1 at 3). The PCR motion was denied without an evidentiary hearing on June 5, 2008. (Docket Entry 1 at 3).

5. The Appellate Division affirmed the PCR court's decision, *State v. Salesky*, No. A-5337-07, 2009 WL 4824717 (N.J. Super. Ct. App. Div. Dec. 16, 2009), and the Supreme Court denied certification on June 3, 2010, *State v. Salesky*, 997 A.2d 230 (N.J. 2010).

6. On or about September 15, 2010, Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in this Court. *Salesky v. Balicki*, No. 10-4806 (D.N.J. Mar. 27, 2012). This Court denied the petition on the merits on March 27, 2012. *Ibid.*

7. The United States Court of Appeals for the Third Circuit denied Petitioner's request for a certificate of

appealability on December 28, 2012. *Salesky v. Balicki*, No. 12-2166 (3d Cir. Dec. 28, 2012).

8. On November 20, 2015, Petitioner filed a second petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in this Court. *Salesky v. Bonds*, No. 15-8221 (D.N.J. filed Nov. 20, 2015).

9. Subsequent to the filing of his habeas petition in this Court, Petitioner filed a motion before the Third Circuit requesting permission to file a second or successive § 2254 petition. *In re Leonard Salesky*, No. 15-3922 (3d Cir. filed Dec. 9, 2015).

10. Petitioner's habeas petition is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). AEDPA requires that before a district court may consider a second or successive § 2254 petition, the petitioner "shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A).

11. Absent an order from the Third Circuit authorizing the second or successive petition, this Court lacks jurisdiction to consider the petition.

12. As Petitioner's motion is presently pending before the Third Circuit, the Court shall administratively terminate the

petition subject to reopening in the event the Third Circuit grants Petitioner's motion.

13. Petitioner **shall submit** a copy of the Third Circuit's order granting or denying his motion to the Clerk of this Court as expeditiously as possible upon receipt of that order.

January 6, 2016
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
Chief U.S. District Judge